

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TADEUSZ TOPORKIEWICZ
A 97 112 435

Plaintiff,

V.

MICHAEL CHERTOFF, Secretary of the U.S. Department of Homeland Security; MICHAEL MUKASEY, U.S. Attorney General; EMILIO T. GONZALEZ, Director, U.S. Citizenship & Immigration Services; RUTH A. DOROCHOFF, District Director, U.S. Citizenship & Immigration Services, Chicago Field Office; F. GERARD HEINAUER, Director, Nebraska Service Center; and ROBERT S. MUELLER, III, Director of the Federal Bureau of Investigation,

Defendants.

FILED: JULY 1, 2008
NO. 08CV3763
JUDGE LEINENWEBER
MAGISTRATE JUDGE MASON

TC

PETITION FOR A WRIT OF MANDAMUS

NOW COMES the Petitioner, Tadeusz Toporkiewicz, by and through his attorney, Stanley J. Horn of Horn, Khalaf, Abuzir, Mitchell & Schmidt, and Petitions this Honorable Court to issue a Writ of Mandamus compelling the Defendants to complete the processing of this Application for Adjustment of Status, and in support thereof, states as follows:

STATEMENT OF ACTION

1. This petition is brought to compel action on an Application for Adjustment of Status under Section 245 (“I-485”) of the Immigration and Nationality Act properly filed with the United States Citizenship and Immigration Services (“USCIS”) by the Plaintiff. To the Plaintiff’s detriment, Defendants have failed to adjudicate the application.

JURISDICTION AND VENUE

2. This court has original jurisdiction to hear both civil actions arising under the laws of the United States and actions to compel an officer or employee of the United States or any agency thereof to perform a duty. 8 U.S.C. § 1329; 28 U.S.C. § 1331; 28 U.S.C. § 1361. This Court also has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201-2202.

3. This action is brought to compel the Defendants, officers and an agency of the United States, to perform the duties arising under the laws of the United States. This Court has jurisdiction to hear actions arising from claims that an agency or officer or employee of a government agency failed to act in its or his or her official capacity and the person to whom the duty was owed suffered a legal wrong. 5 U.S.C. § 702.

4. This action invokes the Plaintiff's right of due process under the Fifth Amendment of the United States Constitution, over which this Court retains jurisdiction. This action is also brought due to the failure of the Defendants to perform their duty to adjudicate the Plaintiff's Application to Adjust Status under Section 245 of the Immigration and Nationality Act. Failure to adjudicate said Application has resulted in harm to the Plaintiff.

5. Venue is proper in the Northern District of Illinois because Plaintiff resides in the Northern District of Illinois and a substantial part of the activities complained of occurred in the Northern District of Illinois. See 28 U.S.C. § 1391(e).

PARTIES

6. Plaintiff, Tadeusz Toporkiewicz, applied for adjustment of status under Section 245 of the Immigration and Naturalization Act. Plaintiff filed an Application for Adjustment of Status on May 30, 2003.

7. Defendant Michael Chertoff ("Chertoff"), the Secretary for the Department of Homeland Security ("DHS"), is being sued in his official capacity only. Pursuant to the Homeland Security Act of 2002, Pub. L. 107-296, Defendant Chertoff, through his delegates has authority to adjudicate Applications for Adjustment of Status filed with the United States Citizenship and Immigration Services (USCIS) to accord applicants lawful permanent resident status under Section 245 of the Immigration and Naturalization Act.

8. Defendant Michael Mukasey ("Mukasey"), the Acting Attorney General of the United States, is being sued in his official capacity only. Mukasey is authorized to promulgate regulations governing the implementation and administration of the Immigration and Nationality Act pertaining to the adjustment of status to that of Lawful Permanent Resident of legal resident aliens and other qualified aliens.

9. Defendant Emilio T. Gonzalez, the Director of the United States Citizenship and Immigration Services, is being sued in his official capacity only. His Under Secretary position within the Department of Homeland Security charges him with supervisory authority over federal and contract employees who are responsible for the processing of immigration benefits.

10. Defendant Ruth Dorochoff ("Dorochoff"), the Officer-in-Charge of the USCIS Chicago Field Office, is being sued in her official capacity only. Dorochoff is in charge with supervisory authority over all of Chicago USCIS operations and USCIS agents and officers acting in their official capacity.

11. Defendant F. Gerard Heinauer ("Heinauer"), the Director of the USCIS Nebraska Service Center, is being sued in his official capacity only. Heinauer is charged with supervisory authority over all of the Nebraska USCIS operations where Plaintiff's application is currently pending.

12. Defendant Robert S. Mueller III ("Mueller"), Director of the Federal Bureau of Investigation ("FBI"), is being sued in his official capacity only. Mueller has authority over the FBI's actions and the actions of its agents and officers. The FBI is statutorily obligated to conduct security checks on all Applications for Adjustment of Status.

CAUSE OF ACTION

13. Plaintiff filed Form I-485, Application for Adjustment of Status on May 30, 2003 with the USCIS pursuant to Section 245 of the Immigration Act of 1990, Pub. L. No. 101-649, 104, Stat. 4978, 8 U.S.C. § 1255 (see Exhibit 1).

14. Plaintiff followed the appropriate procedures for the adjustment of status process, including having fingerprints taken in accordance with the procedures set up by the Defendants.

15. Plaintiff has not been interviewed on his application, nor has he even been scheduled for an interview.

16. That there has not yet been a decision on Plaintiff's Application for Adjustment of Status, despite the fact that it has been pending since May 30, 2003, and despite numerous inquiries with USCIS.

17. That the Defendants' failure to adjudicate the Plaintiff's Application for Adjustment of Status has no basis for the unconscionable delay.

PRAYER

WHEREFORE, Plaintiff prays that this Court grant her the following relief:

- A. Assume jurisdiction over the case;
- B. Order Defendants to adjudicate the Plaintiff's application within 60 days;
- C. Award Plaintiff reasonable attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, for failure of the Defendants to perform their duties within the statutory time period; and

D. Such other relief at law and in equity as justice may so require.

Respectfully submitted,
TADEUSZ TOPORKIEWCZ

BY: s/Stanley J. Horn

STANLEY J. HORN

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UNITED STATES OF AMERICA

RECEIPT NUMBER LEN-03-191-53207		CASE TYPE I485 APPLICATION TO ADJUST TO PERMANENT RESIDENT STATUS	
RECEIVED DATE May 30, 2003	PRIORITY DATE	APPLICANT A97 112 435 08CV3763 TOPORKIEWICZ, TADEUSZ	JUDGE LEINENWEBER
NOTICE DATE June 2, 2003	PAGE 1 of 1	MAGISTRATE JUDGE MASON	

WILLIAM E. LASKO II
WILLIAM E LASKO II PC
79 WEST MONROE STREET SUITE 1312
CHICAGO IL 60603

Notice Type: Receipt Notice

TC
Amount received: \$ 1305.00
Section: Adjustment as direct
beneficiary of immigrant
petition

The above application or petition has been received. It usually takes 450 to 480 days from the date of this receipt for us to process this type of case. Please notify us immediately if any of the above information is incorrect.

We will send you a written notice as soon as we make a decision on this case. You can also use the phone number 800-375-5283 to obtain case status information direct from our automated system 24 hours a day with a touch-tone phone and the receipt number for this case (at the top of this notice).

If you have other questions about possible immigration benefits and services, filing information, or Immigration and Naturalization Service forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call our TDD at 1-800-767-1833.

You can also visit the INS on the internet at www.ins.gov. On our web site you can get-up-to-date case status information on your case and find valuable information about immigration services and benefits.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

NEBRASKA SERVICE CENTER
U. S. IMMIG. & NATZ. SERVICE
P.O. BOX 82521
LINCOLN NE 68501-2521
Customer Service Telephone: 800-375-5283



EXHIBIT

1.